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Application **GRANTED**. The initial pretrial conference and deadline to submit a joint status letter and proposed case management plan are **ADJOURNED**, sine die. In the joint status letter to be filed following a decision from the JPML, the parties shall include a statement as to whether any party requests the rescheduling of the initial pretrial conference during the resolution of the initial procedural matters listed in paragraphs 2(a)-(e) of the parties' stipulated schedule. Such letter shall also include a statement of the parties' views regarding a stay of discovery during through the pendency of any motion(s) to dismiss. So Ordered.

The Clerk of Court is respectfully directed to close the motion at Dkt. No. 40.



Dale E. Ho
U.S. District Judge

Dated: January 24, 2024
New York, New York

Re: *SMBA Construction, LLC v. Sika Corporation, et al.*
Case No. 1:23-cv-10875-DEH

Hon. Dale E. Ho
United States District Court for the Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Ho:

We represent Defendants RPM International Inc. and The Euclid Chemical Company in the above-referenced action, and we submit this letter with the consent of all Defendants¹ to respectfully request that the Court adjourn the initial pretrial conference scheduled for February 7, 2024 (and the associated January 31, 2024 deadline for a case management plan) until after the United States Judicial Panel on Multidistrict Litigation (“JPML”) rules on Plaintiff’s Motion for Transfer of Related Actions to the Southern District of New York for Centralized Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 (the “Motion to Transfer”) . See MDL No. 3097 Dkt. 1.

¹ The Defendants are Compagnie de Saint-Gobain S.A. (“Compagnie de Saint-Gobain”); Saint-Gobain N.A., (“Saint-Gobain”); Chryso, Inc. (“Chryso”); GCP Applied Technologies, Inc. (“GCP,” and with Compagnie Saint-Gobain, Saint-Gobain, and Chryso, the “Saint-Gobain Group”); Sika AG and Sika Corporation (collectively, “Sika”); Cinven Ltd.; Cinven Inc., Master Builders Solutions Admixtures U.S., LLC (“MBSA”), and Master Builders Solutions Deutschland GmbH (“MBSD,” and with Cinven Ltd., Cinven Inc., and MBSA, the “Master Builders Group”); The Euclid Chemical Company (“Euclid”) and RPM International Inc. (“RPM,” and with Euclid, the “Euclid Group”).

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By way of background, this action is one of only eight² that has been filed against Defendants in this Court and in the U.S. District Court for the Eastern District of Pennsylvania, wherein the plaintiffs in all these cases raise substantially similar claims that Defendants engaged in unlawful conduct in violation of federal and state antitrust laws. On December 18, 2023, this Court put on calendar an initial pretrial conference to be held February 7, 2024. *See* Dkt. 6.

On December 19, 2023, Plaintiff in this action filed a Motion to Transfer all direct and indirect purchaser cases raising substantially similar allegations against Defendants to the U.S. District Court to the Southern District of New York. *See* MDL No. 3097 Dkt. 1. The JPML has set the deadline to respond to the Motion to Transfer as January 31, 2024, and the deadline for any replies as February 7, 2024. *See* MDL No. 3097 Dkt. 12. In both this case and those cases pending in the Eastern District of Pennsylvania, Plaintiffs and Defendants filed stipulations adjourning Defendants' deadlines to respond to the complaints until after a decision is issued on the pending Motion to Transfer and after consolidated complaints have been filed.³

In response to the parties' stipulation in this case, the Court ordered the parties to file a joint status letter apprising the Court of the JPML's decision within 7 days of any decision on the motion to transfer. *See* Dkt. 34.

Because the JPML's decision could dramatically alter the scope of the matter before this Court, or transfer this matter away from the Court altogether, to maximize efficiency for both the parties and the Court, Defendants now ask the Court to adjourn the February 7, 2024 initial pretrial conference (and related January 31, 2024 deadline). Indeed, Plaintiff's Motion to Transfer could result in the several cases filed against Defendants in the Eastern District of Pennsylvania being transferred to the Southern District of New York, or this case being transferred to the Eastern District of Pennsylvania. Even if the JPML does not grant the Motion to Transfer, the parties may file motions to transfer in each district. And whichever court ultimately presides over this and the other pending cases will have its own views about whether discovery is warranted prior to resolution of the anticipated motions to dismiss, what its scope should be, and what procedures should govern. Accordingly, Defendants

² An additional indirect purchaser class action, *Charles W. Hughes Construction, LLC v. Sika AG et al.*, Case No. 1:24-cv-00460 (S.D.N.Y.), was filed yesterday in the Southern District of New York with a request that the case be deemed related to the *SMBA* case and assigned to this Court.

³ *See SMBA Construction, LLC v. Sika AG, et al.*, Case No. 1:23-cv-10875-DEH-VF (S.D.N.Y.), Dkt. 32; *M&D Peterson, LLC, et al. v. Sika AG, et al.*, Case No. 2:23-cv-04711 (E.D. Pa.), Dkt. 40; *Keystone Concrete Block & Supply Co. Inc., et al. v. Sika AG, et al.*, Case No. 2:23-cv-04723 (E.D.Pa.), Dkt. 40; *570 Concrete, LLC, et al. v. Sika AG, et al.*, Case No. 2:23-cv-04845 (E.D.Pa.), Dkt. 42; *Lakewood Concrete Corp., et al. v. Sika AG, et al.*, Case No. 2:23-cv-04797 (E.D.Pa.), Dkt. 14; *Vera Construction, L.L.C., et al. v. Sika AG, et al.*, Case No. 2:23-cv-05135 (E.D.Pa.), Dkt. 15; *H & S Ready Mix, Inc., et al. v. Sika AG, et al.*, Case No. 2:24-cv-00164 (E.D.Pa.), Dkt. 3.

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respectfully submit that proceeding with either the February 7, 2024 conference or the January 31, 2024 case management plan, with so many preliminary procedural matters unresolved and the substantive legal and factual issues undefined, would be inefficient and risks burdening the Court and parties with unnecessary activities.

This is the first time that Defendants have requested an adjournment of the initial pretrial conference date.

Plaintiff SMBA Construction, LLC takes no position with respect to Defendants' request to adjourn the February 7 conference and, if directed by the Court, will submit a scheduling order and proceed with the conference.

Respectfully submitted,

/s/ Abram Ellis

Abram Ellis
of SIMPSON THACHER & BARTLETT LLP

Counsel for Defendant Euclid Group

cc: All counsel of Record (via ECF & Email)

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⁴ There is no Saint-Gobain corporate entity named "Saint-Gobain N.A."

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